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State v. Childers Appellant's Brief Dckt. 39402

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IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,)	
)	
Plaintiff-Respondent,)	NOS. 39402 & 39403
)	
v.)	
)	
ANTHONY JOEL CHILDERS,)	APPELLANT'S BRIEF
)	
Defendant-Appellant.)	

COPY

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIFTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF CASSIA

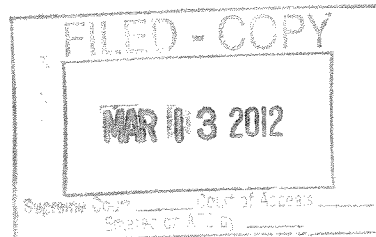
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STATEMENT OF THE CASE

Nature of the Case

Anthony Childers pled guilty to rape and attempted strangulation in two different cases. He received a unified sentence of fifteen years, with three years fixed, in the rape case and a unified sentence of ten years, with two years fixed, in the attempted strangulation case. The two sentences were ordered to run concurrently. Before sentencing, however, Mr. Childers had requested an additional psychiatric evaluation based on the recommendation for such an examination in his psychosexual evaluation report. The district court denied that request.

Mr. Childers contends that the district court's decision to deny him the additional psychiatric evaluation constitutes an abuse of its discretion. The recommendation made in his psychosexual evaluation report informed the district court that an additional psychiatric examination was necessary to determine if Mr. Childers would benefit from psychotropic drugs as part of his rehabilitation plan. The district court erroneously determined that, because there was no indication in the record of a major mental illness, such an additional evaluation was unnecessary. Mr. Childers alleges this decision was improper and an abuse of the district court's discretion. Therefore, this Court should vacate his sentence and remand this case for resentencing after the necessary evaluation has been performed.

Statement of the Facts and Course of Proceedings

Mr. Childers entered pleas of guilty to one count of rape and one count of attempted strangulation.¹ (R., p.58.) In exchange, the State dismissed three other

¹ These charges arose in two different cases, which were addressed simultaneously by the district court. (See, e.g., R., p.58.)

charges. (R, pp.43-44, 68, 131-32, 156.) In preparation for sentencing, the district court asked if a substance abuse evaluation or a mental health evaluation would be of benefit. (Tr., p.22, Ls.14-15.) Defense counsel requested a substance abuse report, but in regard to the mental health evaluation, stated, "I think as far as mental health, if the psychosexual should pick up anything, if there looks to be a need after that we'll ask at that point." (Tr., p.22, Ls.21-24.) The district court permitted this course of action, reserving the decision to order a mental health evaluation until the psychosexual evaluation was completed.² (Tr., p.22, L.25 - p.23, L.1.)

The psychosexual evaluation was subsequently completed and included with the presentence investigation report (*hereinafter*, PSI). After considering his troubled childhood, his lack of a prior adult record, his lack of a sexual offense record, and his lack of deviant sexual impulses, the psychosexual evaluator concluded that Mr. Childers's risk to reoffend could be reduced by fashioning an appropriate rehabilitation plan. (Psychosexual Evaluation (*hereinafter*, PE), p.17.) It informed the district court that such a plan should include counseling, as well as participation in both a substance abuse treatment program and sexual offender treatment program. (PE, pp.17-18.) However, in order to adequately provide a complete rehabilitation plan, the psychosexual evaluator recommended that the district court order a psychiatric evaluation to determine if psychotropic medications would benefit Mr. Childers. (PE, p.18.) The reason it made this recommendation was that "[Mr. Childers's] substance abuse issues may be his attempt to self-medicate and cope with his negative emotion," and the evaluator thought that psychotropic medications might be able to address the negative emotions, and so reduce Mr. Childers's desire to self-medicate. (PE, p.18.)

² The State did not object to this procedure. (See Tr., pp.22-23.)

Based on that recommendation, and pursuant to its reserved decision, defense counsel requested that the district court order the additional, recommended evaluation. (Tr., p.28, Ls.3-10.) The State felt that the psychosexual evaluation provided sufficient information regarding Mr. Childers mental conditions. (Tr., p.27, Ls.12-18.) The district court decided to reject Mr. Childers's request, saying, "I haven't noticed anything in any of the information provided in the PSI that would indicate that there is a major mental illness that's been spotted. . . . I didn't see anything to indicate that there was some overriding or overbearing psychological diagnosis that was at play here." (Tr., p.28, Ls.11-21.) While it did recognize that the recommendation was to promote effective rehabilitation, it determined that there was no need for the additional evaluation, and so, denied Mr. Childers's request. (Tr., p.28, Ls.17-23.)

The district court proceeded to impose sentences for both charges. It imposed a fifteen-year unified sentence for the rape charge, with three years fixed. (R., pp.79-81.) It also imposed a concurrent unified sentence of ten years, with two years fixed for the attempted strangulation charge. (R., pp.168-69.) Thereafter, Mr. Childers petitioned the district court to reduce his sentence pursuant to I.C.R. Rule 35 in each case. (R., pp.87, 174.) As he presented no new evidence in either case, his motions were denied.³ (R., pp.93-97, 180-184.)

Mr. Childers subsequently and timely appealed from both judgments of conviction. (R., pp.99-101, 186-88.) He contends that the district court abused its discretion by denying his request for the additional psychiatric evaluation and, without the information from that evaluation, did not have sufficient information to formulate a

³ Neither of these denials is challenged on appeal.

complete rehabilitation plan. Therefore, he contends the district court improperly imposed his sentences.

ISSUE

Whether the district court abused its discretion when it failed to order the requested psychiatric evaluation.

ARGUMENT

The District Court Abused Its Discretion When It Failed To Order The Requested Psychiatric Evaluation

A. Introduction

The district court had ordered a psychosexual evaluation in preparation for sentencing in this case. That evaluation returned with the recommendation that a psychiatric evaluation be performed in order to fully determine what treatment Mr. Childers needed in order to effectively rehabilitate. Accordingly, defense counsel requested the district court order that evaluation. The district court, however, refused to permit the evaluation. That refusal constitutes an abuse of discretion, and this Court should remedy that abuse by vacating Mr. Childers's sentence and remanding his case for a resentencing complying with the relevant statutory provisions.

B. The Psychiatric Evaluation Was Required For The District Court To Be Able To Sufficiently Consider The Risks And Benefits of Treatment, As Required By Statute

The decision of whether to order a psychological or psychiatric evaluation is within the district court's discretion. *State v. Hanson*, 150 Idaho 729, 732 (Ct. App. 2011). That discretion is guided by I.C. § 19-2522 and I.C.R. 32 (*hereinafter*, Rule 32). *State v. Jockumsen*, 148 Idaho 817, 822 (Ct. App. 2010). If the defendant's mental condition will be a factor at sentencing, the district court is required to appoint at least one psychiatrist or psychologist to assess the defendant. *Id.* (citing I.C. § 19-2522). Among the factors that evaluation must address are: "[a] consideration of whether treatment is available for the defendant's mental condition; [and a]n analysis of the relative risks and benefits of treatment or nontreatment" I.C. § 19-2522(3)(d)-(e). The district court's decision to not order an evaluation will only be upheld if the

information in the record adequately addresses the requirements set forth in I.C. § 19-2522(3) or if there is no reason to believe the defendant's mental condition will be a significant factor at sentencing. *Jockumsen*, 148 Idaho at 822; *State v. McFarland*, 125 Idaho 876, 879 (Ct. App. 1994). Because Mr. Childers requested the additional, recommended evaluation,⁴ the district court abused its discretion when it failed to order that evaluation because without it, the record does not adequately address two of the requirements set forth in I.C. § 19-2522(3) and Mr. Childers's mental conditions were a significant factor at sentencing. See *Jockumsen*, 148 Idaho at 822; *McFarland*, 125 Idaho at 879.

The district court ordered that a psychosexual evaluation be performed on Mr. Childers in preparation for sentencing. (Tr., p.22, Ls.5-6.) It also reserved its decision as to whether to order additional psychiatric or psychological evaluations "depending on what shows up [in the psychosexual evaluation]." (Tr., p.22, L.21 - p.23, L.1.) The psychosexual evaluator made several recommendations for Mr. Childers's participation in various treatment programs, but also recommended that "he have a psychiatric evaluation to determine if psychotropic medications would be of benefit to him." (PE, p.18.) The reason for such a recommendation was that "[h]is substance abuse issues may be his attempt to self-medicate and cope with his negative emotion." (PE, p.18.) This demonstrates that the psychosexual evaluator was unable to fully assess the appropriate treatment necessary to help Mr. Childers rehabilitate, and thus, provide more protection to society. (See PE, p.18.) In order for the district court to have discretion to not order additional mental evaluations, the record must demonstrate what

⁴ Unlike many of the defendants in these other cases, see, e.g., *Hanson*, 150 Idaho 729; *Jockumsen*, 148 Idaho 817, Mr. Childers actually requested the district court order the evaluation. (Tr., p.28, Ls.3-10.)

treatment is available for the defendant, as well as assess the risks of treatment and nontreatment. I.C. § 19-2522(3)(d)-(e). As this record is missing information regarding the availability of certain treatment, based on Mr. Childers's condition, and so cannot provide an adequate assessment of the risks of treatment and nontreatment in that regard, the record does not provide adequate information to meet the requirements of either I.C. § 2522(3)(d) or (3)(e). Therefore, the district court's refusal to order the additional psychiatric evaluation was an abuse of discretion. See *Jockumsen*, 148 Idaho at 822.

The only other reason why the district court might not abuse its discretion in failing to order a psychiatric report is if it finds that "there was no reason to believe a defendant's *mental condition* would be a significant factor" at sentencing. *Id.* (emphasis added). The district court did find that nothing in the PSI "would indicate that there is a *major mental illness* that's been spotted. . . . I didn't see anything to indicate that there was some *overriding or overbearing psychological diagnosis* that was at play here."⁵ (Tr., p.28, Ls.11-15 (emphasis added).) The district court's finding does not excuse its denial of the psychiatric evaluation because "mental conditions" are not limited to only "major mental illnesses" or "overriding or overbearing psychological diagnoses." See Rule 32(b)(1).

⁵ This determination by the district court is troubling because the PSI does, in fact, indicate that a major mental illness, namely bipolar disorder, was potentially an issue in Mr. Childers's condition: "[Mr. Childers] told Dr. Hatzenbuehler [during the psychosexual evaluation] that he was diagnosed with Attention Deficit Hyperactivity Disorder and Bipolar Disorder when he was in foster care" (PSI, p.11.) As such, its finding that no major mental illnesses had been spotted and no psychological diagnoses were at play is highly suspect, if not clearly erroneous.

For example, the term “mental illness” is broadly defined as: “A disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, *or the ability to cope with the ordinary demands of life.*” BLACK’S LAW DICTIONARY, 454 (3rd pocket ed. 2006). The psychosexual evaluator specifically found that Mr. Childers is emotionally immature, and thus, “has not been able to sustain an independent adult lifestyle for very long.” (PE, p.17.) This determination by the psychosexual evaluator meets the definition of “mental illness,” which means that Mr. Childers’s emotional immaturity constitutes a mental condition, and as a mental condition, the district court was required to consider it at sentencing. *Hollon v. State*, 132 Idaho 573, 581 (1999). It is clear that this condition, when combined with Mr. Childers’s substance abuse issues potentially being used to cope with negative emotions (which have led to at least one suicide attempt (PSI, p.11)), should have been a significant factor in his sentencing.⁶ *Compare State v. French*, 95 Idaho 853, 854-55 (1974).

Additionally, having been informed of such a finding, the presentence investigator was required to make a “recommendation regarding a psychological examination *and a plan of rehabilitation.*” Rule 32(b)(10). The psychosexual evaluator, informed both the presentence investigator and the district court that an additional examination was required in order to develop a complete and comprehensive plan of rehabilitation. (PE, p.18.) Without an adequate plan of rehabilitation in the record, the decision to forego the additional evaluation is, therefore, an abuse of discretion, and the district court imposed sentence without sufficient information to consider the treatment options available, as well as the risks of treatment and nontreatment. I.C. § 19-2522(3)(d)-(e).

⁶ If the district court did not consider it so, then it insufficiently considered Mr. Childers’s mental condition, and so abused its discretion in that way as well. See, e.g., *Hollon*, 132 Idaho at 581; *State v. Shideler*, 103 Idaho 593, 595 (1982).

Since the psychosexual evaluator informed the district court that it was necessary to get more information on the potential benefits psychotropic medications might have in treating Mr. Childers's substance abuse issues, the failure of the district court to order the requested evaluation constitutes an abuse of discretion. See, e.g., *Jockumsen*, 148 Idaho at 822; *McFarland*, 125 Idaho at 881. As such, this Court should vacate Mr. Childers's sentences and remand the case for resentencing, which includes the necessary evaluations, compliant with I.C. § 19-2522. See, e.g., *McFarland*, 125 Idaho at 881.

CONCLUSION

Mr. Childers respectfully requests that this Court vacate his sentence and remand his case for resentencing after the necessary evaluation has been performed.

DATED this 13th day of March, 2012.

A handwritten signature in black ink, appearing to read "B. R. Dickson", written over a horizontal line.

BRIAN R. DICKSON
Deputy State Appellate Public Defender

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 13th day of March, 2012, I served a true and correct copy of the foregoing APPELLANT'S BRIEF, by causing to be placed a copy thereof in the U.S. Mail, addressed to:

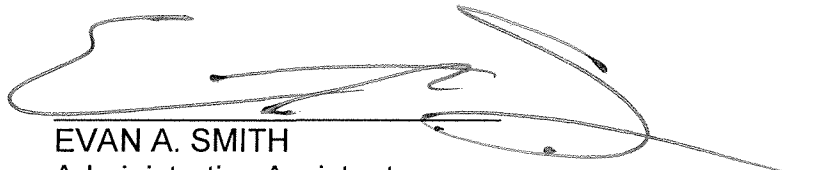
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